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May 28, 1991

Superfund Records Center

BY HAND - URGENT

SITE: Coakley  
BREAK: 119  
OTHER: 559809

Joanna Jerison, Esq.  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
One Congress Street  
Boston, MA 02203

Re: Coakley Landfill Superfund Site: Mobil Oil Corporation

Dear Ms. Jerison:

This firm represents Mobil Oil Corporation ("Mobil"). Mobil received EPA's special notice letter pursuant to Section 122(e) of CERCLA, dated March 29, 1991 with respect to the Coakley Landfill Superfund Site (the "Site"). I am writing to you as the attorney responsible for this matter while Cynthia Catri is on vacation.

EPA's special notice letter alleges that "EPA has information indicating that you are a potentially responsible party ("PRP") as defined in Section 107(a) of CERCLA, with respect to the site." As I indicated to you in our telephone conversation of May 21, 1991, after a thorough and diligent investigation, Mobil has been unable to find any information or documentation that supports this conclusion. Therefore, Mobil again requests that EPA disclose to it any and all information in EPA's possession, custody or control that purports to link Mobil to hazardous substances disposed of at the Coakley Landfill. Such information is necessary to enable Mobil to make an informed response to EPA's special notice letter.

In light of the extensive information previously submitted to EPA, Mobil was surprised to receive EPA's special notice letter concerning the site. In particular, after a thorough investigation of its records and interviews of knowledgeable employees, Mobil provided detailed responses and documentation in response to EPA's information requests of August 19, 1988 and December 14, 1990. Please refer to Mobil's response letters dated September 9, 1988; January 4, 1991 and January 30, 1991. Those letters and the attachments thereto, representing the result of Mobil's investigations of this

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matter, indicate no evidence that hazardous substances from Mobil's Portsmouth, New Hampshire facility, or any other Mobil facility, were sent to the Site. Rather, Mobil's documents indicate, and its current and former employees confirm, that any hazardous wastes, liquid wastes, hazardous materials, special waste and the like were continuously segregated at the Portsmouth facility (consistent with standard practice at Mobil-owned facilities generally), and were handled by licensed haulers who transported these materials to facilities other than the Coakley Landfill.

Although the basis of EPA's claim that Mobil is a PRP at this site has never been clear to Mobil, Mobil has investigated the following potential connections to the Coakley site, which has yielded the following information:

1. Use of Browning-Ferris Industries (formerly Great Bay Disposal). Records found by Mobil, and records recently obtained from BFI, indicate that Mobil used BFI (Great Bay) for non-hazardous solid waste disposal from Mobil's Portsmouth facility from the early 1970's through the mid 1980's. Mobil's investigation has consistently shown that BFI (Great Bay) hauled only relatively small quantities (i.e., approximately one 2-cubic yard dumpster per week) of office waste paper, cardboard packaging materials and small amounts of wood, including old accounting records stored at and disposed of by the Portsmouth facility. All potentially hazardous and petroleum wastes (to the extent relevant under CERCLA) were segregated and disposed of at other locations by other licensed haulers. While BFI (Great Bay) may have transported Mobil's office waste paper to the Coakley facility, of which Mobil has no knowledge, none of the records available to Mobil or BFI so indicate. In any event, any such arrangement would have been made solely by BFI (Great Bay). Mobil has found no indication of any hazardous substances that may have reached the Coakley facility via this route. Thus, Mobil's use of BFI to haul waste paper does not link Mobil to liability at the Site landfill both because Mobil's hazardous substances were segregated from its waste paper and because the hauler or others selected the disposal site.
2. June 19, 1974 Permit. EPA has produced to Mobil a sheet of paper purporting to show that a permit No. 76 was issued to "Mobil Oil (Paul Maddox)", Vehicle ID. N.H. 30538 on 6/17/74. Apparently, this ledger

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records commercial vehicle landfill permits issued by the Town of Newington. Mobil has investigated this alleged permit, both through record searches and an interview of Mr. Maddox. Mobil's records contain no reference to any such permits. Mr. Maddox, a former Mobil employee, stated that he had no knowledge of any such permit, did not recall ever obtaining or signing for such a permit, and had never driven a Mobil truck to or otherwise visited or utilized the Coakley Landfill. He was unaware of any Mobil waste disposal at the Site. Also, Mobil has obtained documentation from BFI indicating that in 1974, Mobil was a customer of Great Bay Disposal Service Inc., and therefore presumably would have had no reason to send any waste materials to the Site via a Mobil truck. It is conceivable that Mobil might have obtained such a permit, but never used it. In any event, Mobil has been unable to find any information concerning this permit, let alone any evidence suggesting that it relates in any way to the transportation or disposal of hazardous substances by Mobil to the Site. Thus, the alleged 1974 permit does not provide evidence that Mobil sent hazardous substances to the Site.

3. Jet Line Services. Jet Line has apparently also been named by EPA as a PRP at the site. According to Mobil's records and employees, Mobil's use of Jet Line at the Portsmouth facility was for petroleum tank cleaning in the late 1980's, well after the Site was closed. During the period that the Coakley Landfill was operational (i.e., 1972 to 1982), Mobil used other licensed contractors (Crago and Clean Harbors) which transported liquid wastes from tank cleaning, etc. to other appropriate disposal facilities, as shown by Mobil's documentation and employee interviews. (Moreover, any petroleum wastes generated by Mobil's facility, wherever they went, would be covered by CERCLA's petroleum exclusion and thus not give rise to CERCLA liability). A Jet Line representative has confirmed to us that he is unaware of any Jet Line dealings with the Site involving Mobil. Thus, Jet Line is not even a potential link between Mobil and the Site.
4. Municipal Solid Waste Policy. Finally, even if notwithstanding Mobil's policy and practice of segregating hazardous substances from its office refuse, minor amounts of hazardous substances might have found their way into Mobil's solid waste dumpster at the Portsmouth facility (of which Mobil has found

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no evidence), EPA's Interim Municipal Settlement Policy (December 1989) states that EPA generally will not seek to impose liability on commercial or industrial generators that generate municipal-type trash (MSW), as long as the trash is not derived from a commercial or industrial process or activity and the waste does not contain greater amounts of hazardous constituents than are ordinarily found in MSW. OSWER Directive #9834.13, pp. 12-13. Here, Mobil can demonstrate that its solid wastes collected by BFI (Great bay) consisted of office waste paper which contained significantly less (if any) hazardous constituents than ordinary municipal, commercial and household waste, due to Mobil's waste segregation policy. Thus, based on all of the evidence revealed by Mobil's investigation and summarized above, it appears that EPA's continued pursuit of Mobil as a PRP at the Site would be inconsistent with EPA's stated enforcement policy, as well as lacking any basis under CERCLA.

In my telephone conference with you on May 21, I requested a meeting between Mobil and EPA to discuss the basis for EPA's assertion that Mobil is a PRP at this site. I also requested any information or documentation that EPA may have linking Mobil to the site, given Mobil's inability to locate any such information itself. Your response was that EPA was unwilling to meet with Mobil, and that Mobil should obtain and review the documentation already disclosed by EPA to the PRP Group. I agreed to contact the PRP Group, and have now done so.

To date, I have spoken with Tupper Kinder, co-chair of the PRPs Steering Committee, and with several other members of the Committee. Mr. Kinder refused to allow Mobil access to the Group's document depository in Portsmouth, on the ground that Mobil is not currently a member of the PRP Group. Mobil has not to date joined due to the absence of evidence of its involvement at the site. Thus, Mobil cannot inspect the documents in the depository. However, Mr. Kinder was willing to describe the documents, which he said consist of some 104(e) responses provided by EPA to the PRP Group, as well as documentation obtained from the site operators, the Coakleys. Mr. Kinder's office furnished to Mobil what were described as the only documents in the PRP Group's custody that purported to link Mobil to the site. These consisted solely of the 1974 permit list described above, and documentation indicating that Mobil had manifested certain wastes to other locations in the 1980's. Mr. Kinder, and other Group representatives, represented to me that the depository contains no other

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documentation purporting to link Mobil to the site, and they are aware of no such documents. Thus, Mobil has exhausted its remedies with the PRP Group on the issue of document review.

Thus, after repeated and diligent inquiries and investigation, Mobil has been unable to find any evidence indicating its potential liability at the Site. Therefore, Mobil renews its urgent request that EPA immediately advise Mobil of, and furnish to Mobil any additional evidence in EPA possession, custody or control that purports to link Mobil to the transportation or disposal of hazardous substances at or to the Coakley Landfill. I believe that under these circumstances, where an alleged PRP has tried repeatedly and failed to find any evidence linking it to liability at a Superfund site and has so advised the Agency, it is incumbent upon EPA to produce whatever evidence (if any) it relies on in asserting that the party is liable. Unless and until EPA produces such evidence, Mobil has no basis on which to agree to join in a settlement or contribute to the cleanup of the Site.

It is my understanding that EPA has extended the deadline for responding to its special notice letter to Tuesday, June 4, 1991. Given that this deadline is fast approaching, I renew my request for a meeting with you and any other necessary EPA attorneys or management employees whose presence may be necessary to address this matter. I believe it is in the mutual interests of EPA and Mobil that EPA immediately inform Mobil of the basis of its claim, so that Mobil may make an informed and responsible decision on how to respond to EPA's special notice letter.

Please call me as soon as possible to discuss EPA's response to this letter, and to arrange a mutually convenient meeting in the near future.

Sincerely,



Christopher P. Davis

CPD:dsm

cc: Gregory Kennan, Esq.  
Cynthia E. Catri, Esq.

XP-1007/m